

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PROPOSED STIPULATION

AND NOW, come the Corrections Defendants, Weaver, Tiller, Sullivan, Davison, Maldonado, Robinson, Wittel, Allen and Kreider, by their attorneys, Thomas W. Corbett, Jr., Attorney General, Kemal Alexander Mericli, Senior Deputy Attorney General, Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and submits the following:

1. Plaintiff, Ronald Fleming's action in filing a civil rights complaint in federal court complaining about prison conditions at SCI-Albion is a constitutionally protected activity.

2. That act of a corrections officer in giving an inmate a false misconduct is an adverse action in the sense it would deter a prisoner of reasonable resolution from pursuing a constitutionally protected activity.

3. Mr. Fleming was charged and convicted of prison misconduct in each instance detailed in the report and recommendation regarding defendants' motion to dismiss:

- a. 5/19/02 – threatening an employee with bodily harm; using abusive obscene or inappropriate language to an employee; refusing to obey an order (SCI-Albion)
- b. 5/20/02 – lying to an employee (false grievance that Sgt. Tiller has assaulted him twice in escorting him to the law library) (SCI-Albion)
- c. 5/30/02 – refusing to obey an order (SCI-Albion)
- d. 8/2/02 – destroying/damaging state property (SCI-Albion)
- e. 8/18/02 – refusing to obey an order; destroying/damaging state property (SCI-Albion)
- f. 8/23/02 – assault; refusing to obey an order (kicking the yard gate shut on C.O. Davison's hand) (SCI-Albion)
- g. 8/11/03 – refusing to obey an order; using abusive etc., language to an employee (SCI-Camp Hill).

4. Mr. Fleming has never succeeded in getting any of these misconducts reversed through the administrative appeals system of the Pennsylvania Department of Corrections.

5. There is no medical proof that Mr. Fleming was physically injured on either May 15, 2002 when he says Sgt. Tiller kicked him in his right ankle and slammed his right wrist in a cell door slot or on August 23, 2002 when he says C.O. Davison shut a yard gate on his right elbow.

6. Mr. Fleming cannot recover compensatory damages for any of his retaliation claims because manifestly he suffered no physical injuries as a consequence.

Respectfully submitted,

THOMAS W. CORBETT, JR.
Attorney General

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Date: October 12, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Proposed Stipulation was served upon the following via first-class mail on October 12, 2005.

Ronald Fleming
350 Bessemer Road
Steelton, PA 17113

s/Kemal Alexander Mericli
Kemal Alexander Mericli
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